

1-1 By: Harris S.B. No. 271
1-2 (In the Senate - Filed November 12, 2008; February 11, 2009,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 March 9, 2009, reported favorably by the following vote: Yeas 7,
1-5 Nays 0; March 9, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the appointment of a successor guardian for certain
1-9 wards adjudicated as totally incapacitated.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 161.101, Human Resources Code, is
1-12 amended by amending Subsection (d) and adding Subsection (f) to
1-13 read as follows:

1-14 (d) The department may not be required by a court to file an
1-15 application for guardianship, and except as provided by Subsection
1-16 (f) and Section 695(c), Texas Probate Code, the department may not
1-17 be appointed as permanent guardian for any individual unless the
1-18 department files an application to serve or otherwise agrees to
1-19 serve as the individual's guardian of the person or estate, or both.

1-20 (f) On appointment by a probate court under Section 695(c),
1-21 Texas Probate Code, the department shall serve as the successor
1-22 guardian of the person or estate, or both, of a ward described by
1-23 that section.

1-24 SECTION 2. Section 695, Texas Probate Code, is amended by
1-25 adding Subsections (c), (d), and (e) to read as follows:

1-26 (c) The court may appoint the Department of Aging and
1-27 Disability Services as a successor guardian of the person or
1-28 estate, or both, of a ward who has been adjudicated as totally
1-29 incapacitated if:

1-30 (1) there is no less restrictive alternative to
1-31 continuation of the guardianship;

1-32 (2) there is no family member or other suitable
1-33 person, including a guardianship program, willing and able to serve
1-34 as the ward's successor guardian;

1-35 (3) the ward is located more than 100 miles from the
1-36 court that created the guardianship;

1-37 (4) the ward has private assets or access to
1-38 government benefits to pay for the needs of the ward;

1-39 (5) the department is served with citation and a
1-40 hearing is held regarding the department's appointment as proposed
1-41 successor guardian; and

1-42 (6) the appointment of the department does not violate
1-43 a limitation imposed by Subsection (d) of this section.

1-44 (d) The number of appointments under Subsection (c) of this
1-45 section is subject to an annual limit of 55. The appointments must
1-46 be distributed equally or as near as equally as possible among the
1-47 health and human services regions of this state. The Department of
1-48 Aging and Disability Services at its discretion may establish a
1-49 different distribution scheme to promote the efficient use and
1-50 administration of resources.

1-51 (e) If the Department of Aging and Disability Services is
1-52 named as a proposed successor guardian in an application in which
1-53 the department is not the applicant, citation must be issued and
1-54 served on the department as provided by Section 633(c)(5) of this
1-55 code.

1-56 SECTION 3. This Act takes effect immediately if it receives
1-57 a vote of two-thirds of all the members elected to each house, as
1-58 provided by Section 39, Article III, Texas Constitution. If this
1-59 Act does not receive the vote necessary for immediate effect, this
1-60 Act takes effect September 1, 2009.

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